IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/09/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE A.K. RAJAN

W.A.NO.2916 of 2004 and W.A.NO. 3236 of 2004
and
CROSS OBJECTION SR.Nos.92446 & 92447 OF 2004
and
WAMP.NOs.5392, 6097 & 6098 OF 2004

W.A.NO.2916 of 2004

The Association of Management of
Private Colleges
rep by its Secretary
C/o. Loyola College
Nungambakkam High Road
Chennai 600 034. .. Appellant

-vs-

1. The Government of Tamil Nadu,
rep by the Secretary to Government
Fort St. George
Chennai 9.

2. The Director of Collegiate Education
College Road
Chennai 6.

3. All India Council for Technical Education
Indira Gandhi Sports Complex
I.P.Estate
New Delhi 110 002. .. Respondents

W.A.No.3236 of 2004:

Jansons School of Business
sponsored by Jansons Foundation
68-A, Namakkal Main Road
Tiruchengode 637 211

Namakkal District
rep by its Trustee. .. Appellant

vs.

1. State of Tamil Nadu
rep by the Secretary to Government
High Education (J-2) Department
Secretariat
Fort St. George
Chennai 9.

2. The All India Council for
Technical Education,
Indira Gandhi Sports Complex

Indhraprastha Estate
New Delhi 110 002
rep by its Secretary. .. Respondents

Writ appeals filed under Clause 15 of the Letter Patent against the
common order dated 20.7.2004 made in W.P.Nos.8921 and 15091 of 2004.

!For Appellant .. Mr.P.Haridoss, Senior Counsel
in WA.2916/04 for Mr.K.S.Govinda Prasad, &
Mr.K.Shakespeare

For Appellant .. Mr.R.Parthasarathy
in WA.3236/04 for Mr. Sathish Parasaran

^For Respondents .. Mr.A.L.Somayaji,
in both WAs Addl.Advocate General
Assisted by Mr.D.KrishnaKumar,
Special Govt. Pleader

Mr. Vijayanarayanan For AICTE
in both WAs

:COMMON JUDGMENT

P.K. MISRA, J.

Writ Appeal No.2916 of 2004 has been filed by the Association of
Management of Private Colleges against the decision of the learned single
Judge in W.P.No.8921 of 2004 and Writ Appeal No.3236 of 2004 has been filed on
behalf of Jansons School of Business in respect of the very same judgment
passed by the learned single Judge in W.P.No.15091 of 2004.

2. The facts and circumstances giving rise to the present spate of

litigations are as follows :-
After the decision of the Supreme Court in T.M.A. PAI FOUNDATION AND OTHERS v. STATE OF KARNATAKA AND OTHERS (2002 (8) SCC 481) □ hereinafter referred to as T.M.A.Pai case and the subsequent clarificatory decision reported in ISLAMIC ACADEMY OF EDUCATION AND ANOTHER v. STATE OF KARNATAKA AND OTHERS (2003 (6) SCC 697)- hereinafter referred to Islamic Academy case, All India Council for Technical Education, hereinafter referred to as □AICTE□ in short, issued guidelines dated 28.1 0.2003, in exercise of power conferred under Sections 10(b) and 10(o) of the AICTE Act, 1987, for Common Entrance Test for Admission to MBA/PGDBM (or Equivalent) Programmes in the Country for the academic year 2004-05. On the very same day, a separate set of guidelines was issued in exercise of the very same power for Admission to MCA Programmes in the Country. Thereafter, the Government of Tamil Nadu issued G.O.Ms.No.47 Higher Education (J2) Department dated 21.2.2004. In W.P.No.8921 of 2004, filed by the Association of Management of Private Colleges, the directions contained in pa ragraph 4(iii) were challenged, whereas, in W.P.No.15091 of 2004 filed by Jansons School of Business, prayer was to quash the G.O. in its entirety.

3. The provisions contained in paragraph 4 of G.O.Ms.No.47 dated 21 .2.2004, so far as relevant for the purpose of the present appeals, are extracted hereunder :-
□ 4. They accordingly, direct that,
i) Common Entrance Tests be conducted by the State Government for admission of students to MCA / MA Programmes in Government Engineering, Government Arts and Science Colleges, Government Aided Engineering, Government Aided Arts and Science Colleges and Self financing Engineering, Self financing Arts and Science Colleges including stand alone institutions.

ii) Apportionment of seats between Government and Government Aided and between Government and Self-financing colleges be made in respect of MCA/MBA programmes as below:-
(a) to (c) . . .
(d) 50% of the seats in unaided non-minority engineering and unaided non-minority Arts and Science Colleges be filled through State common entrance test applying rule of reservation of the State Government and the remaining 50% be earmarked as management quota.
(e) 30% of the seats in the unaided engineering and unaided minority Arts and Science colleges be filled through State common entrance test applying rule of reservation of the State Government and the remaining 70% be earmarked as management quota.

iii) In respect of Government Engineering Colleges and in respect of Government quota in Government Aided Engineering Colleges and Government quota in self financing engineering colleges both minority and non-minority, the Director of Technical Education shall admit the students who have written the State level Common Entrance Test and who have applied for admission in the Government and Government quota in Government Aided and self financing engineering colleges. In respect of Government Arts and Science Colleges and

Government quota in Government Aided and self-financing Arts and Science colleges, the Director of Collegiate Education shall admit the students who have written the State level Common Entrance Test and who have applied for admission in Government, Government aided Arts and Science Colleges and self-financing Arts and Science colleges against Government quota. In respect of Government quota in Engineering Colleges application has to be sent to the Director of Technical Education and in respect of Government quota in Arts and Science Colleges, application has to be sent to the Director of Collegiate Education. The Director of Technical Education / Director of Collegiate Education has to make admissions, only based on the marks obtained by the students in the State level Common Entrance Test and by following the rule of reservation of the State Government.

iv) . . .

4. The main contention raised in the Writ petition filed by the Association of Management of Private Colleges was to the effect that the directions contained in 4(iii), empowering the Director of Technical Education and the Director of Collegiate Education, as the case may be, to admit the students, who have written the State Level entrance test in the Self-financing Engineering Colleges, and the Selffinancing Arts and Science Colleges respectively, is beyond the competence of the State Government.

5. In the writ petition filed by the Jansons School of Business, the main contention is to the effect that the Government does not have any power to apportion 50% of the seats in the unaided non-minority Engineering and Arts & Science Colleges.

6. During pendency of the writ petitions, AICTE on the basis of its own application had been impleaded as a party. Separate counter affidavits had been filed on behalf of AICTE and the Government of Tamil Nadu.

7. In the counter affidavit filed on behalf of AICTE, it is indicated that the guidelines issued by AICTE in accordance with Section 10(o) of the AICTE Act had not been impugned in any of the writ petitions and the direction of the Government being in consonance with such guidelines formulated by AICTE, the writ petitions were liable to be dismissed.

8. In the counter affidavit filed on behalf of the State Government, similar stand was taken.

9. Learned single Judge while negativing the attack against G.O.Ms.No.47 dated 21.2.2004 and upholding the same, has observed :
 . . . admissions already made by following the norms and standards fixed by the AICTE for the year 2004-2005 upto 21.2.2004 shall not be interfered with.

10. In both the appeals, the main contention raised by the appellants is to the effect that the colleges/institutions offering MBA/MCA course are not professional colleges and as such, the observations made by the Supreme Court in T.M.A.Pai case and Islamic Academy case are not at all

applicable, and therefore, the Government did not have jurisdiction to carve out 50% of the seats in such un-aided colleges/institutions. In W.A.No.2916 of 2004, filed by the Association of Management of Private Colleges, the specific contention is to the effect that as per the provisions contained in the Tamil Nadu Private Colleges (Regulation) Act, which applies to such private colleges, the power to grant admission is conferred on the Principal of the college and the Government did not have jurisdiction to interfere with such statutory authority conferred on the Principal, and therefore, the directions contained in paragraph 4(iii), conferring right on the Director of Technical Education and the Director of Collegiate Education, as the case may be, to admit students against 50% of the seats, is without jurisdiction. In W.A.No.3236 of 2004, filed by Jansons School of Business, which offers a degree in MBA, it is contended that as per the guidelines issued by AICTE, which had been published in the newspaper,it had been indicated that seats can be filled up either by following All India Common Entrance Test or by following State Level Tests and the Institute has already taken steps to admit students on the basis of the merit in the All India Entrance Test, namely MAT, which is one of the approved tests, and therefore, the Government did not have power to prescribe for a different test and that too at a highly belated stage.

11. Learned counsels appearing for both the appellants have almost in one voice contended that the learned single Judge, instead of considering the main question as to whether the Government had any power to issue the directions, has riveted his attention on the question as to whether the guidelines issued by AICTE are in conformity with the decisions of the Supreme Court in T.M.A.Pai case and Islamic Academy case. It is also contended by the counsels appearing for both the appellants that MBA/MCA courses are not technical courses and hence, the direction issued by the Government is beyond the power of the State Government.

12. Mr. Vijay Narayan, learned counsel appearing for AICTE has submitted that since validity of the guidelines issued by AICTE had not been specifically challenged and the direction issued by the Government is being in conformity with the guidelines issued by AICTE, the learned single Judge has rightly negatived the contention relating to validity of G.O.Ms.No.47 dated 21.2.2004. He has submitted that even though the colleges are styled as Arts or Science colleges, since such colleges are offering courses in MCA or MBA, they are also governed by the provisions contained in AICTE Act, and therefore, the guidelines issued by AICTE are binding.

13. Learned Additional Advocate General, appearing for the State, while supporting the conclusions of the learned single Judge on merit, has questioned the validity of the observations made by the learned single Judge as contained in paragraph 24 of the judgment. It is also submitted by him that since the directions had been issued by the Government keeping in view the observations made by the Supreme Court in T.M.A.Pai case and Islamic Academy case as well as the guidelines issued by AICTE, and since the colleges are offering technical education, the guidelines issued by AICTE are binding. It is also contended by him that the colleges must be taken to be professional colleges so far as they offer the course for MBA/MCA, and therefore, the

observations made in T.M.A.Pai case, as clarified in Islamic Academy case relating to professional colleges, are squarely applicable.

14. In T.M.A.Pai case, it was observed :

" 68. . . . It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes." (Emphasis added)

15. Subsequently, in Islamic Academic case, it was observed as follows :-

" 13. . . . However, a proper reading of paragraph 68, indicates that a further distinction has been made between minority and nonminority professional colleges. It is provided that in cases of nonminority professional colleges " a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on the basis of counselling by State agencies. The prescription of percentage has to be done by the Government according to local needs. . . . . A reading of paragraphs 59 and 68 shows that in nonminority professional colleges admission of students,other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter."

16. From the aforesaid observations, it is obvious that in respect of professional colleges, even though unaided, the State Government is empowered to fix certain percentage to be filled up by the management and other seats to be filled up through the process of selection undertaken by the State Government.

17. Learned counsel for the appellants, of course, have vehemently contended that the colleges/institutions offering MBA/MCA are Arts and Science colleges and cannot be considered as technical institutions and also as professional colleges. In our opinion, such submission made on behalf of the appellants, cannot be accepted.

18. Under Section 2(g) of the ACITE Act, the expression "Technical education" is defined, which is as follows :-

2(g). Technical education means programmes of education, research and training in Engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare.
Technical institution is defined under Section 2(h) of the AICTE Act, as follows :-
2(h). Technical institution means an institution, not being a University, which offers courses or programmes of technical education and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions.

19. In view of the definitions, which are extracted above, there cannot be any doubt that MBA/MCA course offered by the colleges or institutions, is coming within the definition of Technical education. Similarly, programmes of education and training in management would obviously come within the definition of Technical education as per Section 2(g). Therefore, any institution or college which offers the degree in Computer Applications or Management must be taken to be Technical institution as defined under Section 2(h) of the AICTE Act.

20. We need not labour hard on this aspect, as a similar contention earlier raised on behalf of the colleges offering MCA, has been rejected by this Court in the decision reported in 2004 (1) CTC 1 (SADAKATHULLAH APPA COLLEGE AND OTHERS v. ALL INDIA COUNCIL FOR TECHNICAL EDUCATION AND OTHERS). It is of course true that an appeal against the said decision is pending before the Supreme Court, but there is no order of stay. The precedent value of the aforesaid Division Bench still holds good. Accordingly, we have no hesitation in observing that self-financing Arts & Science colleges offering MBA or MCA as one of the disciplines and stand alone colleges offering either MBA or MCA, as the case may be, are to be taken as Techn ical institutions.

21. Mr. Parthasarathy, learned counsel appearing for the appellant in W.P.No.3236 of 2004 has vehemently contended that even assuming that the appellants college, which is a stand alone college, offering MBA as a course, is not a professional college as understood in common parlance. He has submitted that only where a formal degree in a particular discipline is insisted upon as a condition precedent for pursuing a particular profession, such a course should be considered as a professional course. He has submitted that disciplines such as Law, Medicine, Nursing, etc. may be considered as professional courses, as under the relevant statutes, a person without obtaining degree in those subjects, cannot pursue the profession. He has further submitted that a person may be appointed in a managerial post, even though he does not have any formal degree in Business Administration or Management and similarly, any person having adequate knowledge in Computer Applications can be engaged in such a capacity, even though he may not be having a formal degree. We do not accept such a submission made by Mr.Parthasarathy, on behalf of the appellant in W.A.No.3236 of 2004, as in our opinion, expression professional course as discussed in the decision of the

Supreme Court in T.M.A.Pai case should be understood in a generic sense and would mean any course which prepares or trains a person with special skill and knowledge to enable such person to pursue such profession with skill.

22. Even assuming for the sake of argument that such courses are not considered as professional courses, yet, in our opinion, the observations made by the Supreme Court in T.M.A.Pai case would be applicable to such colleges offering Post Graduate study in Business Administration or Computer Applications or other Management courses. This is quite evident from the following observation made by the Supreme Court in paragraph 68:

 . . . The same principles may be applied to other nonprofessional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes.

23. Therefore, in either view of the matter, it must be taken that the ratio of the decision of the Supreme Court in T.M.A.Pai case, as explained in paragraphs 13 and 16 of the Islamic Academy case, would be applicable, and therefore, it wou to the State Government to fix a proportion of seats to be filled up through the State and leave a proportion of seats to be filled up as Management quota. Entry 25 in List III of Schedule VII of the Constitution read with Article 162 enable the State to issue such directions.

24. The separate guidelines dated 28.10.2003 for Common Entrance Test for Admission to MBA/PGDBM and to MCA Programmes for the academic year 2004-05 also clearly visualise the apportionment of seats towards the Management quota and the State quota. It cannot be said that G.O.Ms.No.47 dated 21.2.2004, issued by the State is in any way contrary to the guidelines issued by AICTE.

25. Learned single Judge has observed that the guidelines issued by the AICTE are in conformity with the observations made by the Supreme Court in T.M.A.Pai case and Islamic Academy case. As a matter of fact, validity of the guidelines issued by AICTE has never been challenged in the writ petitions. From the aforesaid discussion, the main contention raised by the appellants to the effect that the Government do not have any power to apportion the seats, is without substance and liable to be rejected.

26. Mr. Haridoss, learned Senior Counsel appearing for the appellant in W.A.No.2916 of 2004, has relied upon the decisions reported in 1 997(3) CTC 76 (THE ASSOCIATION OF MANAGEMENTS OF PRIVATE COLLEGES v. STATE OF TAMIL NADU AND OTHERS) and A.I.R. 1995 SC 1395 (P. KASILINGAM v. P.S.G. COLLEGE OF TECHNOLOGY AND OTHERS) in support of his contention that no separate quota could be carved out by the State for itself and the State only can lay certain principles regarding reservation of seats for the weaker sections of the society.
In AIR 1995 SC 1395 (cited above) it was observed that the provisions contained in Tamil Nadu Private Colleges (Regulation) Act, 1976 and Tamil Nadu Private Colleges (Regulation) Rules, 1976 do not apply to the professional and

technical educational institutions.
In 1997 (3) CTC 76 (cited above), wherein G.O.Ms.No.245 dated 7.5.19
97 reserving 50% of the seats in all the unaided Graduate Colleges to be
filled up through Government process was struck down. The ratio of the said
decision would be inapplicable to the present case, as the colleges in
question are offering technical courses, which have to satisfy the requirement
of AICTE Act and guidelines. Moreover, in view of the observations made by
the Supreme Court in T.M.A.Pai case, as clarified in Islamic Academy case, the
ratio of such decisions relied upon by the learned Senior Counsel would not be
applicable to these colleges, which are offering technical/professional
courses or at least Post Graduate courses. The observation made in T.M.A.Pai
s case being squarely applicable even to technical or post graduate courses,
the principle laid down in 1997(3) CTC 76 (cited supra) has lost its efficacy.

27. Mr. Haridoss, the learned Senior Counsel appearing for
the appellant in W.A.No.2916 of 2004 has submitted that even assuming that
some proportion of the seats could be reserved as the State quota, the power
of admission is required to be exercised only by the Principal. Such power
cannot be taken away from the Principal and be exercised by the Director of
Technical or Collegiate Education. Once the State carves out its quota as per
the observations made in Islamic Academy case, it is left to the State to fill
up those seats in accordance with its own procedure. Moreover, it is to be
noted that in clause 8 of the AICTE guidelines for admission to MBA it has
been indicated :
 (8) All admissions in different approved quotas shall be made
strictly on the basis of inter-se merit based on common entrance tests as
above. Seat allocation shall be coordinated by the State Authority in case of
State level admissions and by the Central Authority in case of admissions made
on All India basis.

Similarly, in clause 6 of the guidelines in respect of admission to
MCA, it has been indicated :
 (6) All admissions in different approved quotas shall be made
strictly on the basis of inter-se merit based on common entrance tests as
above. Seat allocation shall be coordinated by the State Authority in case of
State level admissions and by the Central Authority in case of admissions made
on All India basis.

28. In view of the aforesaid guidelines, validity of which is
not challenged in any manner whatsoever, and in view of the observation of the
Supreme Court in paragraphs 13 and 16 of the Islamic Academy case, the
directions contained in 4(iii) cannot be said to be beyond the authority of
the State.

29. Mr. Parthasarathy, the learned counsel appearing for the
appellant in W.A.No.3236 of 2004 has submitted that without laying down the
fee structure, the State should not have fixed the quota for itself. For the
aforesaid purpose, he has placed reliance upon the Division Bench decision of
this Court reported in 2002 (3) Law Weekly 151 (KONGU ENGINEERING COLLEGE v.
STATE OF TAMIL NADU AND OTHERS). The Division Bench concentrated on the
following questions:-

 ... first, as to whether the State can act independently of the AICTE and hold Common Entrance Test for AICTE approved MBA and MCA seats in the State and proceed to regulate the fees for these courses in exercise of its executive powers under Article 162 of the Constitution of India, and if not whether the Policy resolution of the Central Government dated 18th March 1997 confers such a power on the State Government; second, as to whether the fee fixation and conduct of the entrance test form integral parts of the single window scheme and if so, whether the holding of the common entrance test without complying with the requirements of the policy resolution with regard to the time, method, and manner of fixation of the fees, is permissible in law; . . .

After examining the aspects in the aforesaid background, the Division Bench came to the conclusion that the Director of Technical education had no authority to fix the fees and that the State had no power to hold Common Entrance Test as the conduct of such test is a matter of Regulation for AICTE. It was also observed that the notifications issued by the State on this aspect do not conform to the policy reservation already made by the State and as such the notifications were invalid.

30. The decision of the Division Bench of this Court rendered prior to the decision of the Supreme Court in T.M.A.Pai case to the extent it runs counter to the latter case cannot be followed. Moreover, in our opinion, the circumstances in the present case are entirely different. In view of the decision of the Supreme Court in T.M.A.Pai case, as clarified in Islamic Academy case and in view of the guidelines issued by AICTE, which recognise the right of the State to hold Common Entrance Test for the purpose of giving admission to students within the quota ear-marked for the State, by no stretch of imagination it can be said that the action taken by the State is in any way contrary to the guidelines issued by the AICTE. In the facts of the present case, the ratio of the aforesaid decision relied upon by the learned counsels for the appellants is not at all applicable, as it is admitted that in the meantime, the Permanent Committee appointed by the State Government has gone into the question of fee structure and certain recommendations have also been made.

31. Mr. Parthasarathy, learned counsel appearing for the appellant in W.A.No.3236 of 2004, has next submitted that even assuming that the State Government has power to issue the direction, the direction which was issued belatedly on 21.2.2004 should not be made applicable to the appellant's institution at least for this year as the process of admission had commenced much prior to the said date. He further submitted that as per AICTE guidelines, admissions to MBA/PGDBM can be made either from All India Entrance Tests or State Level Tests and admissions being already made on the basis of the All India Entrance Test, there is no scope for holding a different test and the learned single Judge has rightly protected the admissions made prior to 21.2.20 04 and in fact, such direction of the learned single Judge should be made applicable to admissions made even after 21.2.2004.

32. Learned Additional Advocate General appearing for the State has opposed such submission. It is rightly pointed out by the learned

Additional Advocate General that even as per the Advertisement issued by the appellant's institution, namely Jansons School of Business, the admission could not have been completed before 21.2.2004, as the candidates were supposed to have a group discussion and interview only in the month of March. He has submitted that even though an order of stay was initially passed, subsequently, the Court had permitted the State to hold the Common Entrance Test, which has already been held. He has further submitted that the observation made by the learned single Judge in paragraph 24 of the judgment to the effect that the admissions completed before 21.2.2004 should not be interfered with, is without any consequence, as no admission could have been completed before the said date.

33. It is not disputed that the academic year/session had not been completed by the end of February and the Under Graduate students could not have even appeared at the qualifying Graduate examination. It is of course true that selection process for admission had started and some students must have appeared at the All India Common Entrance Test, namely MAT, which was adopted by the appellant's college. However, no admission could have been completed before 21.2.2004, as results were yet to be declared and the group discussion for short listed student was to be held in the month of March. Admission, if any, should be taken as a provisional admission, rather a provisional selection.

34. Mr. Parthasarathy, the learned counsel appearing for the appellant in W.A.No.3236 of 2004 has submitted that since there was an order of stay, the college was free to make admission. It is no doubt true that initially an interim order of stay was there, which was subsequently modified and the State was permitted to hold its Common Entrance Test. However, at no point of time, the Court had permitted the appellant's Institute to complete the process of admission. The G.O.Ms.No.47 dated 21.2.2004 was within the knowledge of the college and the student as well, and even though such direction had been stayed, it did not give any licence to the appellant to fill up the seats in a hot-haste manner even without bothering to wait for the final outcome of the litigation. Admission, if any completed, must be taken to be at the own risk of the Management and no equity can be claimed by such institution which possibly wanted to overreach the court by hastening the process of admission.

35. As a matter of fact, W.P.No.15091 of 2004 was filed by Jansons School of Business only in the month of May, 2004. In the affidavit filed in support of the writ petition, there is no categorical assertion that admission in respect of certain students have already been completed in all aspects before 21.2.2004. In paragraph of the affidavit, it is indicated :

" 2. In this Writ Petition the petitioner is challenging the order passed by the 1st respondent in G.O.Ms.No.47, Higher Education, dated 21.2.2004, seeking to interfere with the selection process undertaken by the petitioner for admission of students for the M.B.A. Course for the academic year 2004-2005 as notified by the AICTE and also seeking to take away 50% of the seats through the common entrance test conducted by the State Government, which is contrary to the norms and guidelines and also the Regulations of the A.I.C.T.E. . . . " (Emphasis added)

It is further asserted :-

"12. As has been submitted already, the petitioner adopts the method of selection of students through MAT, which is a recognised method of selection on All India basis for the academic year 2004-2005. It is further submitted that the petitioner has already taken steps to process the admission through MAT and the same has reached a stage, which cannot be set at naught. The petitioner has already remitted the entire amount payable to MAT. The applicants of the petitioner's Institution have written their examination in February i.e. prior to the date of issue of impugned G.O." (Emphasis added)

In Ground No.G(i), it has been indicated :-

"(i) The process of admission has already started even before the issue of G.O.Ms.No.47, dated 21.2.2004."

36. From the aforesaid, it cannot be said that in fact the entire admission process had been completed by 21.2.2004, even though there are some vague assertions here and there. In fact in the grounds taken in the writ appeal, it is indicated:-
" 12. The appellant submits that the learned judge has erred in assuming that all the admissions made by the appellant before 21.2.2004 when factually it has been submitted before the learned judge by giving a tabular statement that all admissions made by the appellant after the said date. (Emphasis added)

13. The appellant submits that it has remitted the entire application money collected from the students of AIMA for the MAT test held on 1.2.2004 and except for physically admitting the students, the entire process was over much prior to 21.2.2004. In the light of the above and in the light of the fact that the first respondent has failed to constitute the state level committee as envisaged by Hon'ble Supreme Court, the impugned G.O. Is liable to be quashed."

37. A careful reading of above paragraphs coupled with the assertions made in the writ petition, would clearly indicate that even though the process of selection had been initiated and to some extent successful candidates were identified, it cannot be stated that admission was over by 21.2.2004. In the aforesaid background, the plea of the appellants for applying the principle of equity to safeguard the admissions already made, does not deserve acceptance.

38. It is not disputed that the academic session starts from 1st June of a particular year and ends in 31st May of the next year. When the direction has been issued by the Government on 21.2.2004, admission could not have been completed before 21.2.2004 and admission, if any, being provisional, the appellant cannot claim any equity, particularly, when the appellant did not bother to wait for the result of the writ petition and tried to foreclose the matter by hastening to admit the students even in the month of May. It is no doubt true that the stay order had been granted, but the interim stay did not permit the college to admit students. As a matter of fact, if the

colleges wanted to complete the process of admission, at least they could have sought for permission from the Court. Even otherwise, when the litigation is pending, admission, if any, must be taken to be subject to the result of the petition in the Court. The object of passing any interim order is to protect the interest of both the parties as far as possible, but it is not intended to enable a litigant to unduly steal a march over the other side and to present the court with a fait accompli. Therefore, we do not see any equity on the side of the appellant in W.A.No.3236 of 2004, who has tried to overreach the Court.

39. Learned Senior Counsel, Mr. Haridass, in the connected appeal has fairly submitted at the threshold that in fact, the colleges have not completed the process of admission, and therefore, the direction given by the learned single Judge in paragraph 24 did not carry any meaning for the appellant Association.

40. Learned counsels have however submitted that since the direction of the learned single Judge has not been challenged by the State Government, such a direction should not be modified in the appeals filed by the appellants themselves.

41. Learned Additional Advocate General appearing for the State has submitted that, as a matter of fact, two cross-objections have been filed, which have been given S.R. Numbers. There may be some doubt whether cross-objections can be filed in writ appeals, where the appeals are filed under the Letters Patent and the Appellate Side Rules framed by the High Court. Without going into this question, the crossobjections filed by the State can be considered as independent appeals. The question of delay may crop-up. However, from the copy of the order filed on behalf of the appellants, it is very much apparent that the office had only prepared the copy on 6.8.2004, and therefore, obviously the order copy could not have been served on the State before 6.8.2004, in which event, the Memorandum presented on 31.8.2004 must be taken to be within 30 days and thus within time, even if those are treated as appeals. Even otherwise, as rightly contended by the learned Additional Advocate General, the observation made by the learned single Judge may not help any of the appellants, as it cannot be said that any admission in fact had been completed before 21.2.2004. Therefore, in either case, the right of the State to fill-up its quota of seats cannot be defeated by such observation made in the judgment. We accept such submission.

42. In the result, while dismissing the appeals filed by the appellants, it is made clear that the appellants are entitled to fill-up their quota of seats as per the procedure contemplated for filling up the Management quota and the balance is to be filled up by the State in accordance with G.O.Ms.No.47 dated 21.2.2004. However, following the observations made in W.A.Nos.2707, 2920 & 3053 of 2004 dated 25.8.2004, it is made clear that if any seat out of the Government quota remains vacant, such unfilled seats may be filled up by the Management in accordance with the procedure contemplated for filling up Management quota.

43. Writ Appeal Nos.2916 and 3236 of 2004 are accordingly

dismissed, subject to the aforesaid observation. The connected Cross Objection SR.Nos.92446 & 92447 of 2004 treated as appeals, are also disposed of in the aforesaid terms. No costs. Consequently, WAMP.Nos.5392, 6 097 and 6098 of 2004 are closed.

Index : Yes
Internet: Yes

dpk

To

1. The Government of Tamil Nadu,
rep by the Secretary to Government
Fort St. George
Chennai 9.

2. The Director of Collegiate Education
College Road
Chennai 6.

3. All India Council for Technical Education
Indira Gandhi Sports Complex
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New Delhi 110 002.